

Public Notice and Agenda

MTC LITIGATION COMMITTEE MEETING The Westin Alyeska Prince Hotel, Girdwood, Alaska Monday, July 24, 2000

1:00 p.m. – 3:00 p.m.

- I. Convene and Introductions.
- II. Public Comment Period.
- III. Report of the Executive Director, Dan R. Bucks.
- IV. State Tax and Federalism Cases on the United States Supreme Court Docket.

Supreme Court Decisions

- ***Hunt-Wesson, Inc. v. Franchise Tax Board***, 528 U.S. ____ (Feb. 22, 2000, No. 98-2043). California's interest offset rule violates the Due Process Clause as impermissible extraterritorial tax on a non-domiciliary taxpayer. <http://supct.law.cornell.edu/supct/html/98-2043.ZO.html>
- ***United States v. Morrison*** and ***Brzonkala v. Morrison***, 529 U.S. ____ (May 15, 2000, No. 99-5 & 99-29). Congress exceeded its commerce clause powers in providing a federal civil remedy for the victims of gender-motivated violence in the Violence Against Women Act. <http://supct.law.cornell.edu/supct/html/99-5.ZO.html>
- ***Jones v. United States***, 529 U.S. ____ (May 22, 2000, No. 99-5739). Congress's anti-arson provision does not extend to arson of private residences. The Court did not reach the constitutional issue, but its statutory interpretation may have been influenced by it. <http://supct.law.cornell.edu/supct/html/99-5739.ZO.html>
- ***Crosby v. National Foreign Trade Council***, 530 U.S. ____ (June 19, 2000, No. 99-474). Massachusetts' Burma Law restricting state agency purchases from companies doing business with Myanmar is preempted under the Supremacy Clause by federal sanctions against Myanmar. <http://supct.law.cornell.edu/supct/html/99-474.ZS.html>
- ***Raleigh for Estate of Stoecker v. Ill Dept of Rev.***, 530 U.S. ____ (May 30, 2000, No. 99-387). The burden of proof in a bankruptcy court's determination of a tax liability should not be shifted to the state (to promote equity among creditors) but should remain with the taxpayer as directed under state tax statutes. <http://supct.law.cornell.edu/supct/html/99-387.ZO.html>

- ***Village of Willowbrook v. Olech***, 528 U.S. ____ (February 23, 2000). Equal Protection Clause provides a private right of action for damages to challenge governmental action where claimant alleges state actor “intentionally treated claimant differently from others similarly situated and that there is on rational basis for the difference in treatment.”
<http://supct.law.cornell.edu/supct/html/98-1288.ZPC.html>

Decisions Pending in the Supreme Court

- ***New Hampshire v. Maine*** U.S Supreme Court Docket No. 130, Orig. Original jurisdiction complaint by New Hampshire against Maine to settle boundary dispute involving Maine's attempt to impose income tax against New Hampshire residents employed at Portsmouth Naval Shipyard. New Hampshire alleges its eastern boundary with Maine extends to the islands on which the shipyard is situated.
- ***Missouri Director of Revenue v. CoBank ACB***, U.S. Supreme Court Docket No. 99-1792. Court granted certiorari with the following order: “The petition for a writ of certiorari is granted limited to the following question: ‘Does 12 U.S.C. Section 2134 authorize states to tax the income of the National Bank for Cooperatives, a federally chartered instrumentality of the United States?’”.

Certiorari Pending

- ***Kruger v. Garden District Association***, (5th Cir., No. 99-30515, 1/20/00), S.Ct. No. 99-1919. Unpublished Fifth Circuit Court of Appeals decision dismissed appeal of trial court dismissal of suit for lack of jurisdiction under the Tax Injunction Act finding appeal moot in light of state court judgment for appellant involving the same operative facts. Petition for cert. filed 5/31/00.
- ***Milligan v. North Carolina***, 522 S.E.2d 330 (N.C. App., 12/7/99), review denied, 351 N.C. 358 (N.C., 3/2/00), S.Ct. No. 99-1938. The North Carolina Court of Appeals held state's controlled substances tax not a criminal penalty, so criminal procedural safeguards do not apply to assessment and collection of tax. Petition for cert. filed 5/31/00.
- ***Thomas Truck Lease, Inc. et al. v. Lee County, Mississippi***, (Miss., No. 95-CT-00745-SCT 9/30/99), S.Ct. No. 99-1722. The Supreme Court of Mississippi upheld state's ad valorem tax on motor vehicles against Commerce Clause challenge. No risk of multiple taxation since vehicles can be domiciled in only one location, and a tax against thirty percent of

the value of vehicles that travel half of their miles in-state, as the taxpayer's trucks did, reasonably reflected the in-state component of the activity being taxed. The issue presented the Court is whether an unapportioned ad valorem tax imposed by the state on instrumentalities of commerce violates the Commerce Clause. Petition for cert. filed 4/25/00.

V. New Business.

VI. Adjourn.

Additional information on this meeting and agenda may be secured from René Y. Blocker, Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001-1538, telephone: (202) 624-8699, fax: (202) 624-8819, rblocker@mtc.gov.